

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

KENNETH J. MYNATT,)	
)	
Plaintiff,)	
)	
v.)	No.: 3:20-cv-00151
)	Judge Campbell
UNITED STATES OF AMERICA,)	Magistrate Judge Holmes
OFFICE OF LABOR MANAGEMENT)	
STANDARDS OF THE UNITED STATES)	
DEPARTMENT OF LABOR, and)	
TREASURY INSPECTOR GENERAL)	
FOR TAX ADMINISTRATION,)	
)	
Defendants.)	

DEFENDANTS' MOTION TO DISMISS PLAINTIFF'S COMPLAINT

Pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6), Defendants move to dismiss Plaintiff's complaint because it fails to state claims upon which relief can be granted, and asserts claims over which this Court has no jurisdiction.

Invoking the jurisdiction of the Federal Tort Claims Act ("FTCA"), Plaintiff alleges that Special Agents from the Department of Labor Office of Labor Management Standards ("OLMS") and the Treasury Inspector General for Tax Administration ("TIGTA") conspired with employees of the Internal Revenue Service ("IRS") to cause Plaintiff's indictment, which Plaintiff alleges amounts to civil conspiracy and malicious prosecution.

Plaintiff's claim for malicious prosecution against the OLMS and TIGTA agents cannot be maintained outright because neither OLMS nor TIGTA agents are prosecuting entities. In order to overcome this fact and establish a pleading hook, Plaintiff alleges Defendants are liable for malicious prosecution because they conspired with IRS employees to provide false statements and misrepresentations to the prosecutor in order to secure Plaintiff's indictment.

However, Plaintiff's allegations that OLMS Agent Kemp provided false evidence to secure his prosecution fail because they do not plausibly allege that he knew or purposefully presented any falsehoods to the prosecutor. Likewise, the allegations that the agents and IRS employees engaged in a civil conspiracy to propagate misrepresentations to the prosecutor fails because Plaintiff does not plausibly allege that the agents engaged in a common scheme with the IRS employees, pursuant to which the agents knowingly presented false evidence in order to bring about Plaintiff's prosecution.

Finally, despite naming OLMS and TIGTA agents as Defendants, Plaintiff specifically identifies only OLMS Agent Kemp as the actor who allegedly knowingly provided false testimony and altered documents to secure Plaintiff's indictment. Because Agent Kemp is not an "investigative or law enforcement officer" within the meaning of the FTCA, the United States is immune from suit pursuant to the intentional tort exception. The United States is also immune from suit because OLMS Agent Kemp was acting in his discretion in referring his findings to the prosecutor. These immunities deprive the Court of jurisdiction.

Apart from the claims against OLMS Agent Kemp, there are no cognizable allegations that TIGTA agents engaged in any presentation of false evidence, and therefore Plaintiff has failed to state a claim against TIGTA.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on September 11, 2020, a copy of the foregoing was filed electronically. Notice of this filing will be sent to the following, if registered, by operation of the Court's electronic filing system. If not registered, notice was sent by First Class, United States mail, postage prepaid, to the following:

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s/ Dean S. Atvia
DEAN S. ATYIA
Assistant United States Attorney